

**REMARKS**

By this Amendment, Applicants have amended independent claims 14 and 24 to include elements in now-canceled claims 15 and 25, respectively. Accordingly, claim 16 has been amended to depend from claim 14, instead of claim 15.

Upon entry of this Amendment, claims 14, 16-24, and 26 remain pending and under current examination. In the Final Office Action (“Office Action”), the Examiner rejected claims 14-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,215,928 B1 (“Friesem”) in view of U.S. Patent Application Publication No. 2003/0007526 A1 (“Pontis”).

Applicants traverse the rejection, though respond as follows to advance prosecution.

**Rejection of Claims 14-26 under 35 U.S.C. § 103(a):**

Applicants request reconsideration and withdrawal of the rejection of claims 14-26 under 35 U.S.C. § 103(a) as being unpatentable over Friesem in view of Pontis.

The Office Action has not properly resolved the *Graham* factual inquiries, as required to establish a framework for an objective obviousness analysis. *See* M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

In particular, the Office Action has not properly determined the scope and content of the prior art. Specifically, Friesem in view of Pontis does not teach or suggest what the Office Action attributes to them. In addition, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has not interpreted the prior art and considered *both* the invention *and* the prior art *as a whole*. *See* M.P.E.P. § 2141(II)(B).

Regarding independent claim 14, the Office Action admitted that Friesem “was silent on how the alignment was accomplished.” Office Action, p. 2. In an attempt to cure this deficiency, the Office Action alleged that Pontis teaches “analyzing the light … and aligning the resonance wavelength through the analyzing of the light beam.” *Id.* According to the Office Action, Applicants’ claim “does not require a specific unique method to accomplish [the claimed] analyzing but instead only requires the analysis of the modulated component.” *Id.* at 2-3.

Applicants respectfully disagree. However, in order to advance prosecution, Applicants amended independent claim 14 to include elements of dependent claim 15 to specify the claimed method of analysis. Specifically, claim 14 recites, in part, “analysing [of] the modulated component of the light beam reflected or transmitted by the tuneable mirror,” “wherein the step of aligning the resonance wavelength is carried out by changing the amplitude of the voltage applied to the tuneable mirror so as to minimise the amplitude of the modulated component of the light beam....” (Applicants have similarly amended claim 24.)

In contrast, Pontis discloses a method of “monitoring transmission characteristics” (Pontis, par. [0006]) by “detecting … variations in the intensity of light associated with the laser external cavity” (*Id.*), which is clearly different from the above-quoted features of claim 14. For example, Pontis only discloses “detecting” light intensity variations as a way to monitor transmission characteristics. However, Pontis does not disclose or suggest at least the claimed “changing the amplitude of the voltage applied to the tuneable mirror so as to minimise the amplitude of the modulated component of the light beam,” as recited in amended claim 14 (emphases added, amended claim 24 containing similar recitations).

In addition, Applicants point out that the rejection of now-cancelled dependent claim 15 is improper. As explained above, the elements of claim 15, now present in claim 14, recite the method of analysis to accomplish the claimed “aligning.” Friesem, however, does not disclose or suggest anything about the claimed “aligning the resonance wavelength.” In fact, this is already admitted by the Office Action at pp. 2 and 4, noting that “Friesem ’928 was silent on how the alignment was accomplished,” and “’928 does not explicitly teach ... the alignment of the resonance wavelength is accomplished by analyzing....”

Thus, the Office Action has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the prior art and the claim language. In view of the reasoning presented above, Applicants therefore submit that amended independent claim 14 is not obvious over Friesem in view of Pontis, whether taken alone or in combination. Amended independent claim 14 should therefore be allowable.

Amended independent claim 24, while different in scope, recites elements similar to amended independent claim 14, and should also be allowable for the same reasons discussed with respect to amended claim 14. Dependent claims 16-23 and 26 should also be allowable at least by virtue of their respective dependence from base claim 14 or 24. Accordingly, Applicants request the withdrawal of the 35 U.S.C. § 103(a) rejection.

**Conclusion:**

Applicants request reconsideration of the application and withdrawal of the rejection. Pending claims 14, 16-24, and 26 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related claims. Regardless of whether any such statements are identified herein, Applicants

decline to automatically subscribe to any such statements or characterizations in the Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

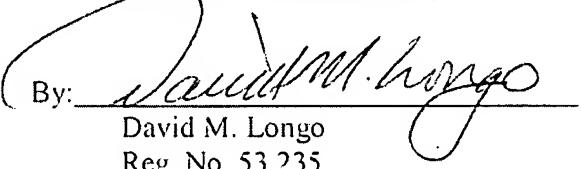
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: March 13, 2009

By:

  
David M. Longo  
Reg. No. 53,235

/direct telephone: (571) 203-2763/